

EXHIBIT “C”
(16 pages)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

TYSON FOODS, INC., et al,)

Defendants.)

4:05-CV-00329-TCK-SAJ

THE VIDEOTAPED DEPOSITION OF

DARREN BROWN, produced as a witness on behalf of
the Defendants in the above styled and numbered
cause, taken on the 26th day of August, 2008, in the
City of Tulsa, County of Tulsa, State of Oklahoma,
before me, Lisa A. Steinmeyer, a Certified Shorthand
Reporter, duly certified under and by virtue of the
laws of the State of Oklahoma.

1 Roger gave him.

2 Q Well, tell me what you can about involvement
3 that you're aware of.

4 A He set up the SOP with Jeremy for the high
5 flow sampling and also developed the formula for how
6 the composite sample or how the samples collected
7 during the high flow events would be composited.

09:28AM

8 Q What do you mean by formula?

9 A There was method by which the -- depending on
10 the flow event that triggered the high flow sampler
11 to take the samples, there's a method or methodology
12 in how you would apportion the samples collected
13 during the period of the sample run and then
14 composite that into a single sample to be submitted
15 to the lab, and that was provided by Tim Cox.

09:28AM

16 Q Was that formula or the method for
17 compositing, is that set out in black and white in
18 the standard operating procedure for high flow
19 sampling?

20 A I believe it's in the procedures for the lab
21 associated with that. I would need to look to be
22 sure.

09:29AM

23 Q Were you provided a copy of that formula?

24 A I was provided the basis for how that formula
25 was derived in one of my E-mails.

09:29AM

1 Q Was the sampling team members involved in the
2 high flow sampling, were they the ones responsible
3 for creating the composite sample according to Tim
4 Cox's instructions or formula?

5 A Not the field sampling personnel.

09:30AM

6 Q Who did it?

7 A The CDM Denver laboratory.

8 Q All right. Any other involvement you're aware
9 of with Tim Cox in this litigation?

10 A I'm aware that he was doing some sort of
11 modeling or assessment support, but I don't know the
12 nature of that support.

09:30AM

13 Q Assessment of what?

14 A Of the flow regimes or how the water systems,
15 the surface water systems act in the basin.

09:31AM

16 Q Was this modeling associated with those same
17 systems, if you know?

18 A I don't know.

19 Q Did you have any direct interaction with Tim
20 Cox?

09:31AM

21 A Only over the phone or by E-mail in providing
22 him notification that samples were coming for him to
23 review and provide that information to the lab on
24 how to composite the samples.

25 Q All right. In a few minutes I want to go

09:31AM

1 through the eight bullet points about each program.
2 As part of asking you generally about the programs,
3 I'm going to ask you what your role was with each
4 one of those programs. So sort of knowing I'm going
5 to ask that detail of you in a minute, can you just 09:32AM
6 tell me generally how you transitioned through
7 different roles or positions in -- as it relates to
8 this field of investigation? If you first started
9 in the summer of 2005 working as a field sampling
10 team member and today you sit in August of 2008 as 09:32AM
11 the project manager, tell us how -- your trip
12 between those points.
13 A Well, there was a project manager during the
14 2005 program, and that manager was more involved
15 with just the financial side of the project in terms 09:32AM
16 of invoicing and making sure that the vendors and
17 the subcontractors had been paid and that CDM was
18 also invoicing and getting paid.
19 Q Who is that person, sir?
20 A I have forgotten her name. I know it's in the 09:33AM
21 records but I've never met her, so I don't remember
22 her name.
23 Q What office was she working out of?
24 A I believe she was working out of the St. Louis
25 office, and she, it's my understanding, left CDM, 09:33AM

1 Q Okay. Let me get us kind of back on track
2 here.

3 A Sorry.

4 Q No. That's all right. The -- in the --

5 starting in June 2006, the 2006 poultry farm 10:01AM

6 sampling, what standard operating procedure applied
7 to that work, and I'm referring to isn't soil and
8 litter in the same SOP?

9 A That is correct.

10 Q Okay. So we can talk about them together, and 10:01AM

11 I think you already did, Barney Barnes. So pardon
12 the confusion. In the summer of 2006 poultry farm
13 sampling, what SOP applied to the collection of soil
14 and litter samples on the poultry farms?

15 A That would have been the February -- the 10:01AM

16 methods laid out in the February 2005 -- February
17 5th, 2007 revision.

18 Q Okay, sir. If this work was done in 2006, it
19 couldn't be a February of 2007 revision.

20 A Well, these SOPs are designed to represent the 10:02AM

21 sampling that actually occurred in the field.

22 There's a -- the April 24th would have been the

23 guidelines. The April 24th, 2006, would have been

24 the guidelines for what was brought into the field

25 for that staff, but as additional information became 10:02AM

1 available on the field, there were revisions that
2 were made and documented in the field books, and
3 then those revisions were then reflected in the next
4 revised SOP, which in this case would have been the
5 2007, the February 5th, 2007 SOP.

10:03AM

6 Q Okay. So are you saying, sir, that standard
7 operating procedures are revised to reflect what was
8 actually done?

9 A That is correct in this program and to provide
10 the guidance for the next field effort.

10:03AM

11 Q I believe from looking through the SOPs you
12 produced, there were version numbers on the SOPs.
13 Do you know them by version number; can you tell me
14 what version number was the one in the field at the
15 time the June 2006 or the 2006 poultry farm sampling
16 was conducted?

10:04AM

17 A It's identified as Revision 7, but it's not
18 stated as Revision 7 in the actual document that the
19 staff had.

20 Q I understand, and I've got a copy of it I'll
21 give you in a few minutes and you can tell me if
22 that's what you're talking about. We need to change
23 tapes. We'll take a brief break.

10:04AM

24 VIDEOGRAPHER: We're now off the Record.

25 The time is 10:04 a.m.

10:04AM

1 the summer of 2006 and fall of 2007?

2 A I believe we've covered all of those.

3 Q All right. How about non-litter applied
4 properties, soil sampling on non-litter applied
5 properties?

10:28AM

6 A We had -- I believe it was three or four. I
7 need to -- I would need to look at the table to be
8 sure, but we sampled properties on or parcels of
9 properties on the Nickel's Preserve as a non-litter
10 applied property, and we had two forested tracts and
11 two open pastures that had reportedly received no
12 application.

10:28AM

13 Q All right. What were the -- your best
14 estimate of the dates when those three categories of
15 properties were sampled?

10:29AM

16 A Those would have been the summer-fall 2006 for
17 the Nickel's Preserve. There was a Bob Cusick
18 property where we sampled two open pastures on his
19 property approximately the same time frame, and then
20 I believe we also did some soil sampling in February
21 2008 on a couple of properties that were identified
22 as not being litter applied but they had beef cattle
23 grazing on them. That's my recollection.

10:29AM

24 Q The forested tracts, when was that done?

25 A The forested tracts would have been done at

10:30AM

1 the same time as -- within the same week as the open
2 fields at the Nickel's property, and I believe that
3 was late summer 2006.

4 Q What standard operating procedures applied to
5 the soil sampling on non-litter applied properties?

10:30AM

6 A We applied the same procedures in terms of
7 setting up grids as best as the property would allow
8 and sample depths were the same, sample procedures,
9 sample decon was the same. With the forested
10 tracts, we had to make exceptions for node points
11 that ended up where a tree was, and we would have to
12 adjust to not be where the tree was, but other than
13 that, the grids and the procedures were the same.

10:31AM

14 Q They were the same as were used on the poultry
15 farms that were sampled in the summer of 2006?

10:31AM

16 A I'm sorry, that's correct.

17 Q So SOP 5-1, Revision 7 was the one at that
18 time, I believe that was your testimony earlier, for
19 the 2006 sample?

20 A Right. Now, I need to make this clear. The
21 difference between Revision 7 and the next revision
22 in 8, what was done in the field was as Revision 7
23 set it up, with the exception of the application of
24 full decontamination and that's the primary
25 difference between Revision 7 and Revision 8. So

10:32AM

10:32AM

1 Revision 7 was done in the field as it was laid out,
2 with the exception that we did not need to do the
3 decontamination after conferring with the experts,
4 Roger Olsen and I believe Mr. Johnson, Gordon
5 Johnson. So we did follow the procedures of
6 Revision 7, but the reason Revision 8 is there is to
7 account for the change in the decontamination
8 process that was implemented before we went into the
9 field.

10:33AM

10 Q All right. The February 2008 soil sampling on
11 the cattle pastures, was that done under SOP 5-1
12 also?

10:33AM

13 A Yes. It would have been 5-1 and then Revision
14 9 as it's in this report.

15 Q All right. The next program is sediment
16 sampling within the streams of the watershed. When
17 was that work done?

10:33AM

18 A There was a field effort in 2005, followed up
19 with a -- I believe it was a little bit more limited
20 effort in 2006.

10:34AM

21 Q What was your involvement generally in each of
22 those?

23 A 2005, I had no involvement, and 2006, it would
24 have been just to provide or designate the staffing
25 to do the work.

10:34AM

1 Q Which SOPs applied to that work?

2 A Sorry. That would be SOP 4-1, sediment
3 sampling in streams and small impoundments, and I
4 believe that would be it.

5 Q Which version was in the field when the 2005 10:35AM
6 sampling occurred?

7 A I don't have direct knowledge of that.

8 Q How about 2006?

9 A It would have been the version, if there is
10 one here -- it would have been the Revision 2, but 10:36AM
11 right now I'm not recalling the specific work that
12 would have been done in 2006.

13 Q The next program, sediment sampling within
14 Tenkiller Ferry Reservoir and two lakes outside the
15 watershed, when was work done in that program? 10:36AM

16 A My understanding is there was some work done
17 in 2005 and then also in 2006 and 2007.

18 Q All right. Break down what work was done in
19 each one of those time periods.

20 A I can't speak specifically to what was done in 10:37AM
21 2005. I do know that there was sampling conducted
22 by Dr. Bert Fisher, and with respect to 2006 and
23 2007, the work would have been using a ponar dredge
24 to bring that material up to the surface and do
25 whatever work was required. 10:37AM

1 Q What was your role respectfully with the 2006
2 and 2007?

3 A Only to provide staffing.

4 Q The description in your report refers to the
5 sediment sampling not only in Tenkiller but also two 10:38AM
6 lakes outside the watershed. When were --
7 distinguish for me for these three years whether
8 that sampling was in Tenkiller or some other
9 reservoir.

10 A I believe Tenkiller was done all three years, 10:38AM
11 and then in 2007 the reservoirs would have been in
12 the fall of 2007 outside the watershed.

13 Q Is that Lake Stockton and Broken Bow?

14 A That's my recollection, yes.

15 Q What was your involvement in the sampling in 10:38AM
16 those two lakes, reservoirs?

17 A Just -- well, to provide the staffing for the
18 work to be conducted, and then I also remember
19 reviewing some air photos and matching that up
20 against previous sample locations that were done 10:39AM
21 by -- that were in other reports and trying to match
22 those locations with or trying to identify a
23 coordinate associated with those locations.

24 Q Which SOPs applied to these lake sediment
25 sampling? 10:39AM

1 A It would have -- sorry. It would be SOP 4-2.

2 Q Which version in 2005?

3 A That I don't know.

4 Q 2006?

5 A It would have been the revision -- sorry. I 10:40AM
6 don't have the SOP here in this document.

7 Q Okay, and why is that? You're saying SOP 4-2
8 was not in the appendix to your report?

9 A Right. It indicates that it was not completed
10 at the time of this report. 10:41AM

11 Q Okay. You -- so as far as your report is
12 concerned, you're not offering any expert opinions
13 that relate to or derive from SOP 4-2?

14 MR. BLAKEMORE: Object to the form.

15 A There is a work plan that would outline the 10:41AM
16 work that was conducted, but it has not been at the
17 time of this report formalized into an SOP document,
18 and so the work was done according to the work plan.

19 Q What's the difference between a work plan and
20 an SOP? 10:42AM

21 A In this project the SOP would have more
22 detailed information on what labs are involved for
23 the samples to be shipped to and it might have a
24 better description of the use of the data that's
25 going to be collected. The SOP might have a better 10:42AM

1 description than the work plan.

2 Q What were the rules established in this field
3 investigation with regard to the necessity of having
4 a finalized approved standard operating procedure in
5 place before sampling occurred; was there any such
6 rule?

10:43AM

7 MR. BLAKEMORE: Object to the form.

8 A The rules for this program were to provide
9 documentation in the field books of what efforts
10 were being done, and the SOPs allowed -- when the
11 SOPs were available in a finalized version, that
12 allowed the field crew to refer back to that SOP in
13 the field book so that they would not have to
14 document the same procedure over and over again. So
15 the SOPs were available to the crews before they
16 went out in the field, and then the field crew were
17 to document any deviations from that field plan or
18 that SOP and note how the work was being conducted.

10:43AM

19 Q But it was not a requirement, an internal
20 requirement in this field investigation that there
21 be a final approved standard operating procedure
22 before sampling occurred; that was not a
23 requirement?

10:44AM

10:44AM

24 A Given that this program started before I had
25 full involvement, I can't say definitively that that

10:44AM

1 was not a requirement.

2 Q Well, you just testified that the lake
3 sediment sampling in 2005, 2006 and 2007 all
4 occurred prior to the time the standard operating
5 procedure 4-2 was finalized?

10:45AM

6 A In that instance, yes.

7 Q Okay. So is the answer to my prior question
8 in this field investigation, it was not a
9 requirement that there be a finalized SOP in place
10 before sampling occurred?

10:45AM

11 MR. BLAKEMORE: Object to the form.

12 A That would -- that has to go back to Roger
13 Olsen. I can't speak to that.

14 Q But you are -- you have submitted an expert
15 report where you are offering opinions about the
16 quality of the field sampling program. Why can't
17 you answer my question?

10:45AM

18 MR. BLAKEMORE: Object to the form.

19 A Because that's more of a policy decision, and
20 I was in charge of implementation of the program.

10:46AM

21 Q I can understand that. So if you weren't the
22 decision maker, I'm not asking you about the
23 rationale. I just want to know what the rules were,
24 and there was not an internal rule or standard in
25 this field investigation that says we will not take

10:46AM

1 samples until we have a finalized standard operating
2 procedure telling us how to take the samples; that
3 was not the case here; correct?

4 MR. BLAKEMORE: Object to the form.

5 Q Yes or no? 10:46AM

6 MR. BLAKEMORE: Same objection.

7 A I am not aware of a written rule within CDM
8 requiring that no work be done until the SOP is
9 finalized.

10 Q Okay. I appreciate that answer, but I don't 10:47AM
11 really care about within CDM. I meant within this
12 field investigation, this project, there was no such
13 rule here either; correct?

14 MR. BLAKEMORE: Object to the form.

15 A Within this -- okay, yes. To clarify, I'm not 10:47AM
16 aware of a rule within this program that stipulated
17 that there would be no field work without a
18 finalized version of an SOP, but there were detailed
19 instructions for the field crews to go out and
20 detailed instructions on how to perform the sampling 10:47AM
21 and how to handle the samples and how to ship the
22 samples, and those instructions became finalized in
23 a series of steps --

24 Q After the sampling --

25 A -- Revision 1, Revision 2, Revision 3, and in 10:48AM

1 at least that instance after the sampling had been
2 performed, but there were detailed instructions on
3 how to do that work.

4 Q The -- all right. Let's skip through this
5 list here. The next program, water quality sampling
6 within the streams and rivers of the Illinois River
7 watershed and at two streams outside of the
8 watershed, when was that work done?

10:48AM

9 A That work would have been performed in 2005,
10 2006, 2007 and 2008.

10:48AM

11 Q And your involvement during each of those
12 years?

13 A 2005, as I indicated, I witnessed some of the
14 high flow sampling in 2005. 2006, 2007, 2008,
15 primarily to designate the staff to perform those
16 samples. I believe I also helped collect samples at
17 the lake inlets for Lake Tenkiller on a couple of
18 occasions. I believe those dates were 2006.

10:49AM

19 Q What were the standard operating procedures in
20 the field applicable to these four years of
21 sampling?

10:49AM

22 A Those SOPs would have been SOP 2-1, automated
23 high flow sampling, SOP 2-2, high flow sample
24 compositing and filtering, SOP 1-1, which is
25 Tenkiller Ferry Reservoir sampling, SOP 6-1, water

10:50AM